

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:10-CV-175-F

A. HERNANDEZ, by and through his)
Guardian Ad Litem, GILDA)
HERNANDEZ, and T. and K.)
HERNANDEZ, by and through their)
Guardian Ad Litem, VERONICA)
VAZQUEZ,)
Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)
Defendants.)

ORDER

This matter is before the court on the Government's unopposed Rule 12(b)(1) Motion to Dismiss for Failure to Exhaust Administrative Remedies [DE-2].

On June 3, 2009, there was a motor vehicle accident involving a vehicle driven by the an Army Sergeant and a vehicle driven by a civilian. The three minor Plaintiffs in this action were passengers in the vehicle driven by the civilian. On December 18, 2009, an attorney filed an administrative claim on behalf of the minor Plaintiffs pursuant to the Federal Tort Claims Act ("FTCA"). According to the Government, on March 22, 2010, the parties agreed to settle the claims of the three minor Plaintiffs, and the Army issued settlement vouchers which were signed by their mother. The Government contends it informed the attorney representing the three minor Plaintiffs that under North Carolina law, settlements with minors require judicial approval.

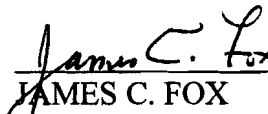
The Government contends that instead of filing an "In Re Action" seeking judicial approval of the settlement, the three minor Plaintiffs instead filed a complaint against the United States in state court on August 12, 2010. *See State Court Complaint* [DE-1-3]. The complaint

appears to seek relief greater than what the parties agreed to in their settlement agreements, and asks for interest. *Id.* It does not mention the approval of a settlement agreement, and instead appears to state a claim for negligence. Attached to the complaint, however, was a petition for appointment of Guardians Ad Litem for the minor plaintiffs representing that "it is necessary that a Guardian Ad Litem be appointed herein for the purpose of representing the interests of the minor children in presenting the proposed compromise settlement to the Court for approval." *Id.* The state court allowed the petition, and appointed Guardians Ad Litem to represent the minor Plaintiffs "for the purpose of representing to the Court an appropriate application for approval of a compromise settlement of the claim for the minor children for injuries and damages arising out of the automobile accident." *Id.*

The Government filed a timely notice of removal in this court, and thereafter filed the instant motion to dismiss for failure to exhaust administrative remedies. For the reasons stated in the Government's supporting memorandum [DE-3], which the court ADOPTS and INCORPORATES herein, the Government's unopposed motion to dismiss [DE-2] on the basis of lack of subject matter jurisdiction is ALLOWED.

SO ORDERED.

This the 29th day of September, 2010.



JAMES C. FOX
Senior United States District Judge